

LABOUR DEPARTMENT

The 19th May, 1981

No. 9(1)81-8/Lab/5547.—In pursuance for the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Ameteeep Machine Tools Pvt. Ltd., 114/7, Mathura Road, Faridabad :—

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 481/1980

SHRI KRISHAN KUMAR, WORKMAN AND THE MANAGEMENT OF M/S AMETEEP MACHINE TOOLS PRIVATE, LTD., 14/7, MATHURA ROAD, FARIDABAD.

Shri Joginder Singh, for the workman.

Shri B.R. Grover for the Management.

AWARD

This reference No. 481 of 1980 has been referred to this court by the Hon'ble Governor, Haryana, *vide* his order No. ID/PD/221-X/53110, dated 14th October, 1980, u/s 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri Krishan Kumar and M/s Ameteeep Machine Tools Pvt., Ltd., 114/7, Mathura Road, Faridabad. The term of reference was :—

Whether the dismissal of Shri Krishan Kumar was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were sent to the parties. The parties appeared on 18th November, 1980. On pleading of the parties following issues were framed :—

- (1) Whether a fair and proper domestic enquiry was held by the Management against the workman ? If so, to what effect ?
- (2) Whether the termination of the services of the workman was justified and in order ? If not, to what relief is he entitled ?
- (3) Relief.

No other issue was pressed or prayed for. Issue No. 1 was to be treated as preliminary issue and decided first.

Both the parties produced their evidence and closed their case. The parties argued before me on length.

The Management produced Shri K.P. Aggarwal, their Enquiry Officer and thereafter closed their case. The concerned workman Shri Krishan Kumar appeared as his own witness and closed his case on issue No. 1.

Coming to the merits of this case MW-I has stated that he held the enquiry against Shri Krishan Kumar, Workman, regarding charge-sheet which is Ex. M-II. This witness further stated that the charge-sheeted workman participated the enquiry, cross-examined the witnesses of the Management, gave his own defence and thereafter closed his case. This witness further stated that the charge-sheeted workman was represented by a co-worker Madhu Kant Jha throughout the enquiry. This witness further stated that the worker signed each page of the enquiry proceedings and that the copies of the proceedings were given to the workman. This witness further stated that the enquiry was conducted in accordance with the principle of natural justice and that all reasonable demands of the workman were met in the enquiry. This witness further stated that he held the workman guilty of the charges and gave his findings based on the record of enquiry. The findings are Ex. M-IV. This witness further stated that on the basis of the findings the services of the workman were terminated by the Management—*vide* their letter, dated 21st August, 1980 which is Ex. M 23.

The workman in his statement before me stated that he was victimized for his trade union activities. He further stated that he wanted to have an assurance from the Management that his witnesses will not be victimized and that no such assurance was given but admits in cross-examination that he did not write this letter to the Management but only to the Enquiry Officer who refused to accept the same. When asked to produce the letter this witness stated that he torn off the letter in frustration. This witness in his cross-examination had admitted that the enquiry was held in his presence, that he received the proceedings of the enquiry and that he signed on page No. 17 of Ex. III in token of having closed this case. This witness in his cross-examination admits of having received a copy of the Standing Orders and a copy of the report on which the charges were based. This witness further accepted in cross-examination that the refusal of the Management in bringing Shri B. N. Sharma from outside and permitting him to bring Madhu Kant a co-worker as representative in this enquiry did not make any difference or loss of any kind to him.

I have heard the arguments of this case and have gone through the record produced by the parties. A perusal of the same shown that the workman was afforded full opportunities to defend his case. It is on the record that the workman participated throughout the enquiry, signed each page of the enquiry in token of the same being recorded in his presence, produced his evidence and thereafter closed his case. The only grievance that the workman has made out is that he was not allowed to bring Shri B.N. Sharma an outsider to assist him in the enquiry and that he was compelled to bring Shri Madhu Kant Jha, a co-worker to assist him in the enquiry, but in his cross examination admits that no harm was done to him for not allowing him to bring Shri B.N. Sharma in the enquiry. The findings of the enquiry officer are base on the record of the enquiry and the incident alleged against the workman in the charge-sheet are fully corroborated by the evidence of management witnesses and that the enquiry officer's findings cannot said to be reversed. It is well-settled principle of law and reference may also be made to the decision of the Supreme Court in the case of Banaras Electricity Light Company 1972 LLJ Vol. II, page 728 Supreme Court that the Tribunal will not sit in appeal on the finding of the enquiry if it is supported by the evidence.

In view of my above discussions, I hold that the enquiry held against the workman is fair and proper and in accordance with the principle of natural justice and that the findings of the enquiry officer are not reversed and accordingly I decide issue No. 1 in favour of the Management against the workman.

Issue No. 2.—In view of my findings on issue No. 1, I hold this issue also in favour of the Management and against the workman. The charges levelled against the workman are of serious and grave nature. The charge against the workman is that he got his Supervisor Shri J. L. Arora beaten up by his friends on 12th July, 1980 at 5.40 p.m. Beating of a supervisor by himself or by outsiders is a serious misconduct and if strict action is not taken by the whole discipline will go to dogs and in that circumstances it will not be possible to function in an orderly manner. It is admitted fact that the workman was also warned for such acts of misconduct and thus warning letters are Ex. M 14 and M 17.

Charges proved being serious and grave. Previous mis-conduct proved. I hold that the punishment of dismissal is quite appropriate in this case.

In view of my findings on issue I and II, I hold that the workman Shri Krishan Kumar is not entitled to any relief. This may be read in answer of this reference. No order as to costs.

Dated 30-4-1981

ISHWAR PRASAD CHAUDHRY,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 971, date 5th May, 1981.

Forwarded (four copies) to the Commissioner and Secy. to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 10 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab./5548.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Avon Automotive Components Pvt. Ltd., Plot No. 59, Sector-6, Industrial Area, Faridabad :—

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 203 of 1980

between

SHRI G. MANDAL, WORKMAN, AND THE MANAGEMENT OF M/S AVON AUTOMOTIVE COMPONENTS
PRIVATE LIMITED, PLOT NO. 59, SECTOR-6, INDUSTRIAL AREA, FARIDABAD

Shri Adarash Kishore Sharma, for the workman.

Shri J. S. Saroha, for the Management.

AWARD

This reference No. 203 of 1980 has been referred to this court by the Hon'ble Governor of Haryana, —*vide* his order No. ID/FD/29-80/14995, dated 26th March, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri G. Mandal, workman, and the management of M/s Avon Automotive Components Private Limited, Plot No. 59, Sector-6, Industrial Area, Faridabad. The term of the reference was :—

Whether the termination of services of Shri G. Mandal was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were sent to the parties. The parties were duly served but the management did not care to come in this court initially and I had to proceed *ex parte* against them on 29th May, 1980. The management sent a letter by post for granting adjournment. This also proved that the management was fully aware of the date fixed. I proceeded *ex parte* against the management and 17th June, 1980 was fixed for the *ex parte* evidence of the workman in this case. On that day the workman made a statement on oath and award was sent, —*vide* this court Endst. No. 1003, dated 23rd June, 1980, an *ex parte* award against the management. On 20th August, 1980, the management appeared and made an application for setting aside the *ex parte* award passed against them which was ordered to be set aside by me after hearing arguments on 23rd September, 1980. Then the parties filed their pleadings. On the pleadings of the parties, the following issues were framed on 7th October, 1980 :—

(1) Whether the termination of the services of the workman is proper, justified and in order? If not, to what relief is he entitled?

(2) Relief.

The case of the management is that this worker worked with them since 1st October, 1975. The rest of the claim statement was refused by the management. They in their written statement state that in the beginning this workman worked satisfactorily and after some time started wilfully neglecting and deteriorating the quality of the material he produced and the management was put to heavy losses on this account. He did not pay any heed to verbal asking and continued to do the same. At last they issued the workman G. Mandal warning but he did not still improve. Helplessly they served a one month notice as per terms of the appointment letter for the termination of his service. They say that they did not terminate him on 8th February, 1980. The workman instead of improving his work started levelling false allegations on the management. The management never disliked union activities by this worker. They have further alleged that this workman was gainfully employed. The workman did not care to file any rejoinder.

The management produced Shri S. K. Budhuraj, its Managing Director as MW-1 and closed his case. This witness produced Exhibit M-1 warning slip, Exhibit M-2 and M-3 warning to the workman, Exhibit M-4 notice of one month period of termination, Exhibit M-7 appointment letter of the workman, Exhibits M-5, M-6 and M-7 rejection slips, Exhibit M-8 to M-14 leave applications and Exhibit M-15 application of the workman for appointment. MW-1 states that Exhibit M-1 to M-7 were issued to this workman when he did not improve the quality of work. After the service of Exhibit M-4 the workman started absenting himself from 27th January, 1980 and remained absent upto 5th February, 1980. On 6th and 7th December, 1980, he again did his duty in the factory and on 8th February, 1980, he served the demand notice with a fear that he may not be removed from service by the management for his shortcomings. In the cross-examination nothing of material has been asked or brought on record from the MW-1. Not even suggestion of victimisation is present in the demand notice or in the claim statement of this workman. Almost whole of the statement of MW-1 is unrebutted. From the side of the workman he appeared as his own witness and produced Exhibit W-1 the demand notice. He states that he was a Grinderman and his work was quite satisfactory. His salary was Rs. 300 P.M. He admits his signatures on Exhibit M-1 to M-4 but he says that these were never read over to him. He admits that he is 7th Class pass and puts his signature in Hindi and English both. He is unemployed. He refused the delivery of warning to him by the management. Appointment letter Exhibit M-7 he admits. He says that he never complained to any body for his signatures having been obtained on Exhibit M-1 to M-4, without the same being read over to him by the management. This workman in his statement agrees to go on duty without back wages and only demands continuity of service.

My findings are as under :—

Issue No. 1 & 2.—This workman has alleged that he was victimised for his union activities by the management but his demand notice and claim statement both are silent on this allegation. Secondly, the workman admits his signature on warning and notices given to him by the management, but he has only objected that the same were not read over to him. These documents he could get read over to himself by some body else. Therefore, this is no reason that he has been victimised. The warnings were given to him for his wilful neglect of duty, production of substandard material due to which the management was liable to having losses. As per terms of the appointment letter Exhibit M-7 he was given one month notice. He was given one month notice on 27th January, 1980, he admits, was to expire only on 26th February, 1980. The contention of the management gets force from this fact only that this workman raised the demand on 8th February, 1980 when he had been on duty on 4th February, 1980 and 7th February, 1980 in the management factory. He raised the demand signature with the fear that he was going to be removed. He has not produced any letter of termination in the court. From the side of the workman it was argued that he had not been given full opportunity to improve and the Exhibits were not supplied to him. This argument does not hold good in this case in favour of the workman. In other way during arguments it has been admitted that the allegation of neglecting work and not improving against this workman of the management are quite true.

With the above discussion I feel that the workman should be allowed one more opportunity to serve the management so that he may improve his work. He has agreed to go on duty without back wages. Therefore, the question of granting back wages to him does not arise. As far as the continuity of service is concerned I think it will be in the interest of the workman and in the interest of the management that he is allowed to join the respondent management factory on a new appointment so that the workman could be more serious to improve the quality of his work. I decide the issues accordingly and this be read in answer of this reference. No order as to costs.

Dated the 3rd April, 1981

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endst. No. 972, dated 5th May, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above-aid award may please be acknowledged within week's time.

ISHWAR PARSAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1) 81-8 Lab./5654 —In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of Engineer-in-Chief, Irrigation Department Haryana, Chandigarh :—

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 201 of 1978

between

SHRI AJEET SINGH, WORKMAN AND THE MANAGEMENT OF ENGINEER-IN-CHIEF, IRRIGATION DEPARTMENT, HARYANA, CHANDIGARH.

Present:—

Shri Khusi Ram Bansal, for the workman.
Shri K.L. Madan, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor, —*vide* his order No. 1D/KNI/6-N-78/34352, dated 21st July, 1978, under section 10(i)(c) of the I. D. Act, for adjudication of the dispute existing between Shri Ajeet Singh, workman and the management of Engineer-in-Chief, Irrigation Department, Haryana, Chandigarh. The term of the reference was :—

“Whether the termination of services of Shri Ajeet Singh was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference, notices as usual were sent to the parties. The workman appeared in response to the same but no one appeared on behalf of the management. The management was proceeded against *ex parte* on 25th September,

1978. *Ex parte* statement of the workman was recorded on 3rd November, 1978. *Ex parte* order was set aside on 3rd April, 1979. The management filed the written statement and workman did not propose to file the rejoinder. On 3rd May, 1979, issues on the basis of the leadings of the parties were framed as under:—

1. Whether the reference is bad in law as there is no industrial dispute ?
2. Whether the irrigation department falls within the definition of Industry as given in section 2(J) of the I.D. Act ?
3. Whether the applicant is covered as a workman as defined under section 2(s) of the I.D. Act ?
4. Whether the workman is estopped for pursuing his reference and the order of Civil Court Jind operates as *res judicata* ?
5. As per reference ?

The management was again proceeded against *ex parte* and the statement of the workman was again recorded on 2nd June, 1979. Again the *ex parte* order was set aside on 7th July, 1979. The summoned witness clerk of the office of Labour Inspector, Jind was examined as WW-2 on 7th July, 1979. The management examined Shri Nafe Singh, S.D.O., Julana as MW-1 and Shri Ishwar Singh, S.D.O., Safidon was examined as MW2.

I heard the authorised representative of the parties and seen the record and decide the issues as under:—

Issue No. 1.

By the introduction of section 2(A) in the I.D. Act, the workman alone has been given the rights to raise the dispute in the matter of his dismissal, termination or otherwise without the matter being taken up by his union or a substantial number of co-workmen of the establishment and the dispute raised by the workman shall be deemed to be an industrial dispute. The plea of the management that no industrial dispute existed is not tenable. This issue is accordingly decided against the management.

Issue No. 2.—The parties have not adduced any evidence on this issue. This issue has been decided by my learned predecessor in reference no. 58 of 1973—*vide* his award dated 25th September, 1975 to which I fully concur while deciding this issue whether Irrigation Department is an industry my learned predecessor or relied on the decision of the Madhya Pradesh High Court between Madhya Pradesh, Irrigation Karamchari Sangh, Sambhag Gwalior, Chambal Canal, Sheopur, Kalan, District Morena (M.P.), reported in 1972, I LJ page 374. Their lordships of the Madhya Pradesh High Court while deciding an identical issue held as under:—

“Held—it would appear that an activity of an institution would amount to ‘industry’ within the meaning of the Act only if the following conditions, are fulfilled:

- (i) it must be analogous to trade or business in a commercial sense although there be no profit motive.
- (ii) it must be capable of being described as an undertaking resulting in material goods or material service. We find that both the conditions are fulfilled in this case. The project is engaged in rendering material service to the community by providing them irrigation facilities. The Government may not be carrying on this undertaking with profit motive but that would not make any difference in as much as the undertaking is analogous to trade or business, as the irrigation facilities are provided on payment of certain charges. Such an activity of the Government cannot be characterised as Governmental or administrative in character. It is essentially a business activity, even though. The motive is general welfare of the people and not profit. We, therefore, hold that the ‘project’ is an industry within the meaning of the Act.”

In view of the observations of their lordships of the Madhya Pradesh High Court made in an identical case on all four, with the case under decision, I hold that the Irrigation Department is an ‘Industry’ and decided this issue in favour of the workman.

Issue No. 3.—When issue No. 2 has been decided in favour of the workman and it has been held that the Irrigation Department is an Industry any person employed in an industry to do any skilled or unskilled manual work, clerical, supervisory or technical he will be deemed to be the workman for the purpose of Industrial Disputes Act as given in section 2(S) of the Act. Any such person given in section 2(S) includes the persons who has been dismissed, discharged or retrenched in connection with or a consequence of that dispute. The management has not led any evidence that the applicant was not their employee and when this much has been admitted the applicant is covered under the definition of workman given in section 2(S) of the I.D. Act. This issue is accordingly decided in favour of the workman.

Issue No. 4.—The management has not led any evidence on this issue. The workman admitted that he filed a suit for injunction in the court of Senior Sub-Judge, Jind, against his suspension. As a matter of fact he stated that he was terminated with effect from 16th September, 1977 and not suspended. He has further stated that the suit was dismissed by the Senior Sub-Judge, Jind on the ground of limitation and not on merit. The management did not place on file the certified copy of the judgement of the civil court. The order passed by the civil court on the ground of limitation admitting the statement of the workman to be true does not place a bar to pursuing his claim in this court either by way of *res judicata* or estoppel. This issue is accordingly decided in favour of the management.

Issue No. 5.—The case of the management is that the workman was employed as workcharge and he was found absent on 7th July, 1977 and the workman was governed by the provisions of the P.W.D. Code. The services of the workmen were terminated in accordance to para 1-129 of the P.W.D. Code after giving him 10 days notice. On the other hand the workman had denied that he was absent on 7th July, 1977 and he has stated that he has come to collect his arrear of pay as reckoned by the S.D.O., himself. The workman had claimed that he put in twelve years of service with the management. The management has not denied the fact in their written statement nor they have put any suggestion regarding the length of his service during the course of cross examination, hence this fact goes undisputed and is proved. Besides the workman filed a complaint, dated 16th July, 1977 before the Labour Inspector, Jind against the deduction of one day pay for 7th July, 1977 and this fact was discovered by the workman when he received pay in the month of August, 1977. The management called for an explanation of the workman—*vide* their letter dated 22nd August, 1977 which was replied by the workman,—*vide* Ex. MW-2/B, MW-2/F which is the copy of the arrear bill in respect of the workman and this arrear was received by the workman on 9th July, 1971. This further supports the case of the workman that he had come to office to collect this arrear of pay but the management issued notice of termination on 5th September, 1977,—*vide* Ex. MW-2/G finding the reply of the workman to be unsatisfactory and without any substance. The management witness MW-2 could not give any date or time of his visit to the place of duty of the workman. He did not even recollect as to when he left the office. From the evidence of the parties it is clear that the management adopted a revengeful attitude after the workman filed a complaint before the

Labour Inspector, Jind and thought of removing the workman from service. The management had already punished the workman when they deducted, one day pay from his wages and the second punishment in terminating the services of the workman was colourable exercise of powers under the guise of P.W.D. Code Rules, but it is an unfair labour practice and amounts to victimisation. To terminate the services of a workman of 12 years service to his credit on the charge of one day's absence and that too not proved can in no way be held as justified. I am, therefore, constrained to hold that the order of termination is not justified and is against the principle of natural justice and the same is therefore, set aside. The workman is entitled to reinstatement with continuity of service and with full back wages. The reference is answered and returned in these terms.

Dated the 6th May 1981

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst. No. 1481, dated the 11th May, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Department, Chanjighat as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)81-8Lab./5702.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Supreme Plastic Industries, Sector-6, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 549 of 1978

between

SHRI RATI RAM, WORKMAN AND THE MANAGEMENT OF M/S SUPREME PLASTIC INDUSTRIES, SECTOR-6, FARIDABAD

Present :

Shri S.R. Gupta, for the workman.

Shri R.C. Sharma, for the management.

AWARD

By order No. ID/FD/112/78/53960, dated 29th November, 1978, the Governor of Haryana referred the following dispute between the management of M/s Supreme Plastic Industries, Sector-6, Faridabad and its workman Shri Rati Ram, to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Rati Ram was justified and in order ?
If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties following issues were framed on 7th June, 1979 :—

(1) Whether the termination of services of the workman was justified and in order ?

(2) Relief.

And the case was fixed for the evidence of the management who examined Shr Devki Nandan Sharma, Manager as MW-1, Shri Anand Singh, Foreman as MW-2 and Shri Mahavir Singh, a workman as MW-3 and closed their case. Then the case was fixed for the evidence of the workman who examined himself as WW-1 and closed his case. Arguments were heard. I now give my findings issuewise :—

Issue No. 1.—MW-1 stated that he looked after the factory. There were about 30-32 workers. The concerned workman was Screen Printer. A workman working 8 hours could print 2500-3000 pieces. The workman was given letters Ex. M-1 to M-3 and then Exhibit M-4 was given to him on 26th August, 1978. Production was noted by the workman himself. Exhibit M-5 was production record. It was for the period upto 30th August. He further stated that on 30th August, 1978 the workman was asked the reason of low production. At that time Shri Anand Singh, Foreman was present. The workman replied that the production will be only that much. His behaviour was wrong. He was charge-sheeted,—*vide* Exhibit M-6, dated 30th August, 1978. Exhibit M-7 was the reply to the charge-sheet and Exhibit M-3 was termination letter. At present the helper of the workman was operating that machine. In cross-examination he stated that screen printing machine was in separate shed and one cannot hear anything except the working of the machine in the other room. He could not tell if there were more than 50 workmen in 1978 in the factory. He could not bring the attendance register for 1978. There were no certified standing orders applicable to the factory. There was no system of giving letter of appointment or fixing conditions of service for a workman. He admitted as correct that the production of Shri Mahavir Singh was recorded as 500, 400, 1,200, 675, 900 pieces per 8 hours in Exhibit M-9. The management had not studied time and motion of a machine to fix production for 8 hours. He could not tell the reason of not sending Exhibit M-4 by post. He could not tell if the workman had refused to receive the same. He admitted as correct that there was no complaint about the workman from 1974 to 1977. He also did not know if the workman was General Secretary of the Union. It was correct that the workman had replied Exhibit M-2 by Exhibit M-10. It was also correct that no enquiry was held against him. He admitted it as correct that on that date there were 30—35 workmen on duty but none was present at the time when the workman replied in a bad manner. He denied the suggestion that Exhibit M-4 was prepared for this case. MW-2 stated that in 8 hours 2500—3000 canopy could be printed in 8 hours. In cross-examination he stated that there was no grievance from the workman during the last four years. From the time there was a demand of revision of wages he had given low production. The concerned workman and Shri Bahadur Singh used to represent other workmen in the redressal of grievance. MW-3 stated that he was helper of the concerned workman. The workman had a talk about production with the Manager and had told that he will give only the same production. There was also a talk about wages. He further stated that the machine could give 2500—3000 production. In cross-examination he stated that Shri Bahadur Singh, workman was also removed from service alongwith the concerned workman. He admitted as correct that both of them were the leaders for revision of wages of the workmen. He used to get Rs. 165 p. m. at that time.

MW-1 stated that he was not given any charge-sheet before termination of his services. Exhibit M-2 and M-3 bear his signatures. No enquiry was held against him. He was General Secretary of the Union. Exhibit M-5 was in his hand. He used to work of making screen and machine was operated by Shri Mahavir helper. He had instruction to operate machine if time was left. He used to operate machine for 2-3 hours and in the rest of time it was operated by Shri Mahavir. His production was recorded in Exhibit M-9. In cross-examination he stated that normally by working 8 hours there could be 1500 good prints. He denied the suggestion that Shri Mahavir started operating machine after his termination. In Ex. M-5 on 17th/26th and 29th July, other work then printing is shown. He was General Secretary of the union since its inception in 1975.

The representative for the management argued that the workman was charge-sheeted for giving low production and misbehaviour. No enquiry was held because Standing Orders were not applicable to the factory. On the other hand the representative for the workman argued that he was a permanent workman having four years service at his credit. The charges levelled against the workman were not bona fide because the concerned workman was General Secretary of the union and was negotiating with the management for revision of wages of the workmen.

I have gone through Exhibit M-1 which is dated 9th January, 1978. Production shown is 900, 700 and 600 pieces per day and the management demanded 2000 pieces per day. In reply to it (Exhibit M-10) the workman replied that the real cause of grievance of the workman in calling for his explanation was that he was General Secretary of the union and the management had decided to terminate his services. It is also there that he was giving full production. On 24th January, 1978 he was given warning Exhibit M-2. Exhibit M-3 is a show cause notice, dated 24th January, 1978 in which he was shown as instigating the workmen for going on tool down strike. Exhibit M-4 is dated 26th August, 1978 calling for explanation of the workman for giving low production. On this letter it is written that he refused to receive the same. There is again a charge-sheet Exhibit M-8, dated 30th August, 1978 which was replied by the workman,—*vide* Exhibit M-7. His services were terminated,—*vide* Exhibit M-8, dated 5th September, 1978. In Exhibit M-6 the management has stated that there were serious charges of low production, misbehaviour and indiscipline against the workman but in the evidence I do not find use of any bad language by the workman. MW-1 has only stated that the workman had stated that he will give only the same production but his attitude was wrong. MW-2 and MW-3 who were stated to be present at that time do not speak of anything adverse. After going through various documents I find there was a bias by the management against the workman since January, 1978 which is proved from Exhibit M-10. As regards giving of low production the management has not shown by any cogent evidence the norms fixed on the machine whereas it is into evidence that the workman was engaged also in making of screen, etc. during his duty hours. The management Witnesses have admitted that there was no grievance from the workman from 1974 to 1977. I do not find any reason which made him a bad workman. Thus the management has failed to discharge their burden of proving the justification of termination of services of the workman, therefore, this issue is decided against the management. The dismissal is by way of unfair labour practice.

Issue No. 2.—The workman is entitled to reinstatement with continuity of service and with full back wages.

While answering the reference, I give my award that the workman is entitled to reinstatement with continuity of service and with full back wages. I order accordingly.

Dated the 9th May, 1981.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 447, dated the 12th May, 1981.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.